



Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

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## **Re: Competition and Consumer Protection in the 21st Century**

The Interactive Advertising Bureau (“IAB”) provides these comments in advance of the Federal Trade Commission’s (“FTC” or “Commission”) hearing on competition and consumer protection in the 21st century, to help inform the Commission’s consideration of the role that digital privacy plays in competition and consumer protection in the modern data-driven economy.<sup>1</sup>

Founded in 1996 and headquartered in New York City, the IAB ([www.iab.com](http://www.iab.com)) represents over 650 leading media and technology companies that are responsible for selling, delivering, and optimizing digital advertising or marketing campaigns. Together, our members account for 86 percent of online advertising in the United States. Working with our member companies, the IAB develops technical standards and best practices and fields critical research on interactive advertising, while also educating brands, agencies, and the wider business community on the importance of digital marketing. The organization is committed to professional development and elevating the knowledge, skills, expertise, and diversity of the workforce across the industry. Through the work of our public policy office in Washington, D.C., the IAB advocates for our members and promotes the value of the interactive advertising industry to legislators and policymakers.

IAB supports a reexamination of the Commission’s approach to privacy in the United States. As technology advances, and more of consumers’ daily lives involve interactions online with myriad devices, industry and regulators should work together to ensure consumers receive the same level of protection, transparency, and choice as they have enjoyed for the past 20-plus years. This new approach should include preemptive federal legislation, coupled with enforceable independent self-regulatory principles, based on an understanding of what are reasonable and unreasonable data collection and use practices.

### **I. The Data-Driven and Ad-Supported Online Ecosystem Benefits Consumers and Fuels Economic Growth**

The free flow of data fuels the data-driven economy. One driving force in that ecosystem is data-driven advertising. It has helped power the growth of the Internet for decades by delivering innovative tools and services for consumers and businesses to connect and communicate. Data-driven advertising, both offline and on the Internet, supports and subsidizes

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<sup>1</sup> Federal Trade Commission, *Hearing on Competition and Consumer Protection in the 21st Century* (Oct. 26, 2018) <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-competition-consumer-protection-21st-century-february-2019>.



the content and services consumers expect and rely on, including video, news, music, and more. Data-driven advertising allows consumers to access these resources at little or no cost to them, and it has created an environment where small publishers and start-up companies can enter the marketplace to compete against the Internet's largest players.

As a result of this advertising-based model, the data-driven economy in the United States has been able to grow and deliver widespread consumer and economic benefits. According to a March 2017 study entitled *Economic Value of the Advertising-Supported Internet Ecosystem* conducted for the IAB by Harvard Business School Professor John Deighton, in 2016 the U.S. ad-supported Internet created 10.4 million jobs.<sup>2</sup> Calculating against those figures, the interactive marketing industry contributed \$1.121 trillion to the U.S. economy in 2016, doubling the 2012 figure and accounting for 6% of U.S. gross domestic product.<sup>3</sup> The study, designed to provide a comprehensive review of the entire Internet economy and answer questions about its size, what comprises it, and the economic and social benefits Americans derive from it, revealed key findings that analyze the economic importance, as well as the social benefits, of the Internet. These benefits require data to be unencumbered by onerous regulations that limit the ability of companies to continue to create innovative new businesses and services.

Consumers, across income levels and geography, embrace the ad-supported model and use it to create value in all areas of life, whether through e-commerce, education, free access to valuable content, or the ability to create their own platforms to reach millions of their fellow citizens. They are increasingly aware that the data collected about their interactions on the web, in mobile applications, and in-store is used to create an enhanced and tailored experience. Importantly, research demonstrates that consumers are generally not reluctant to participate online due to data-driven advertising and marketing practices. To the contrary, in a Zogby survey commissioned by the Digital Advertising Alliance ("DAA"), consumers assigned the value of the ad-supported services, like news, weather, video content, and social media they desire and use to be \$99.77 per month, or \$1,197 a year.<sup>4</sup> A large majority of surveyed consumers, 85%, stated they like the ad-supported model, and 75% indicated that they would greatly decrease their engagement with the Internet if a different model were to take its place.<sup>5</sup> Indeed, as the FTC noted in its recent comments to the National Telecommunications and Information Administration, if a subscription-based model replaced the ad-based model, many consumers likely would not be able to afford access to, or would be reluctant to utilize, all of the information, products, and services they rely on today and that will become available in the future.<sup>6</sup>

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<sup>2</sup> John Deighton, *Economic Value of the Advertising-Supported Internet Ecosystem* (2017) <https://www.iab.com/wp-content/uploads/2017/03/Economic-Value-Study-2017-FINAL2.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> Zogby Analytics, *Public Opinion Survey on Value of the Ad-Supported Internet* (May 2016) [http://www.aboutads.info/resource/image/Poll/Zogby\\_DAA\\_Poll.pdf](http://www.aboutads.info/resource/image/Poll/Zogby_DAA_Poll.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> Federal Trade Commission, *In re Developing the Administration's Approach to Consumer Privacy*, 15 (Nov. 13, 2018) [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-ntia-developing-administrations-approach-consumer-privacy/p195400\\_ftc\\_comment\\_to\\_ntia\\_112018.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-ntia-developing-administrations-approach-consumer-privacy/p195400_ftc_comment_to_ntia_112018.pdf).



## **II. The Existing Privacy Framework Should be Updated to Address Evolving Technology**

The current U.S. legal framework helped the United States take the lead in the data-driven economy. Inherent to this framework is a balancing of reasonable and unreasonable practices that protects consumers from concrete harms. For example, the Health Information Portability and Accountability Act (“HIPAA”) regulates certain health data; the Fair Credit Reporting Act (“FCRA”) regulates the use of consumer data for eligibility purposes; the Children’s Online Privacy Protection Act (“COPPA”) addresses personal information collected online from children; and the Gramm–Leach–Bliley Act (“GLBA”) focuses on consumers’ financial privacy. These statutes create regulation around areas that could create actual harm for consumers if that data is misappropriated or used in a manner that is not considered reasonable. This framework allowed the private sector to develop responsible and reasonable data practices, while prohibiting those practices that could create actual consumer harm. At the core of these laws are the concepts of consumer notice and control, and responsible data practices, all of which lead to the adoption of reasonable data practices in the marketplace.

Built into this framework of laws is the idea that different data points and uses have different sensitivities in the eyes of consumers, and should be regulated as such. The IAB is at the heart of the creation and maintenance of the self-regulatory systems needed to support these statutes and promote reasonable practices. The IAB is integral to the creation and continued operation of the Digital Advertising Alliance (“DAA”) and its cross-industry self-regulatory privacy principles which have been widely implemented across the digital advertising industry. The Self-Regulatory Principles are also reflected in IAB’s Code of Conduct for its members.

Industry recognized this baseline assumption for decades and enshrined it in the DAA’s Self-Regulatory Principles. A key element of the DAA’s program is its restrictions on the use of covered data for certain purposes. Specifically, the DAA prohibits the collection, use, and transfer of Multi-Site and Cross-App Data to determine eligibility for employment, credit, health care treatment, or insurance eligibility and underwriting.<sup>7</sup> We worked with our members and industry as a whole to identify potentially harmful, unreasonable, practices and ban them from the marketplace. While those harmful and unreasonable practices were never part of the industry’s customs, the industry collectively decided to prevent them from ever coming into practice. Similar systems and practices could be layered onto this approach to support a preemptive national standard across the various parts of the Internet that is implemented to build upon the current framework.

The successful approach taken by the DAA led to a February 2012 event at the White House where the then-Chairman of the FTC, the then-Secretary of Commerce, and other Administration officials publicly praised the DAA. The White House recognized the DAA as “an example of the value of industry leadership as a critical part of privacy protection going

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<sup>7</sup> Digital Advertising Alliance, *Self-Regulatory Principles for Multi-Site Data*, 11 (2011); Digital Advertising Alliance, *Application of Self-Regulatory Principles to the Mobile Environment*, 5, 31-32 (2013).



forward.”<sup>8</sup> The DAA also garnered praise from then-Acting FTC Chairman Maureen Ohlhausen who stated that the DAA “is one of the great success stories in the [privacy] space.”<sup>9</sup> In its cross-device tracking report, the FTC staff also stated, “...DAA [has] taken steps to keep up with evolving technologies and provide important guidance to [its] members and the public. [Its] work has improved the level of consumer protection in the marketplace.”<sup>10</sup>

As the FTC assesses how it should approach digital privacy in the coming year, it should consider the reasonableness of certain practices, balanced against consumer expectations and the sensitivity of data in question. Applying such an approach to consumer privacy, as opposed to a blanket, one-size fits all regime across the digital ecosystem, will help strike the appropriate balance between strong consumer privacy choices and continued economic development and innovation. This well-reasoned and thoughtful approach created the existing framework and can continue to undergird the data-driven economy.

### **III. The FTC Should Reject Misguided Privacy Approaches from Abroad and the States to Ensure the Continued Success of the US-Based Data-Driven Economy**

While other jurisdictions, such as the European Union and California, have adopted restrictive approaches to privacy in the General Data Protection Regulation (“GDPR”) and California Consumer Privacy Act (“CCPA”) respectively, the FTC should evolve its approach to privacy to balance new developments in technology and evolving consumer expectations with the need to encourage innovation, small businesses, and economic development. Improving on, instead of abandoning, the 20-plus years of privacy regulation in the United States is the appropriate course.

Less than a year into the GDPR’s applicability, the negative effects of that regime have already become clear. Following the GDPR’s enforcement date, the volume of programmatic advertising in Europe dropped between 25 and 40-percent across exchanges.<sup>11</sup> The publisher side of the industry was also hit hard, with more than 1,000 United States based publishers blocking access to their material in part because of the inability to profitably run advertising.<sup>12</sup> This is an example of how overly restrictive legislative and regulatory approaches can be harmful to competition and consumers alike.

Small businesses and startups also saw the negative impact of the GDPR, choosing to exit the market. Over the time the GDPR has been in effect, startup investments have dropped an

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<sup>8</sup> Speech by Danny Weitzner, We Can’t Wait: Obama Administration Calls for A Consumer Privacy Bill of Rights for the Digital Age (February 23, 2012), available at <http://www.whitehouse.gov/blog/2012/02/23/we-can-t-waitobama-administration-calls-consumer-privacy-bill-rights-digital-age>.

<sup>9</sup> Katy Bachman, *FTC’s Ohlhausen Favors Privacy Self-Regulation*, Adweek (June 3, 2013), available at <http://www.adweek.com/news/technology/ftcs-ohlhausen-favors-privacy-self-regulation-150036>.

<sup>10</sup> Federal Trade Commission, *Cross-Device Tracking: An FTC Staff Report*, 10 (Jan. 2017).

<sup>11</sup> Jessica Davies, DigiDay, *GDPR mayhem: Programmatic ad buying plummets in Europe* (May 25, 2018) <https://digiday.com/media/gdpr-mayhem-programmatic-ad-buying-plummets-europe/>.

<sup>12</sup> Jeff South, Nieman Lab, *More than 1,000 U.S. news sites are still unavailable in Europe, two months after GDPR took effect* (Aug 7, 2018) <http://www.niemanlab.org/2018/08/more-than-1000-u-s-news-sites-are-still-unavailable-in-europe-two-months-after-gdpr-took-effect/>.



estimated 40-percent.<sup>13</sup> Prior to the GDPR's enforcement date, according to media reports, some companies in the United States chose to leave the European market instead of risk the fines related to potential GDPR violations.<sup>14</sup> At least one major United States newspaper is charging European subscribers an additional \$30 to access its online content because of an inability to run effective and profitable advertising in that market.<sup>15</sup>

If the results of the GDPR are any predictor, the United States economy could suffer massive losses and leave consumers with limited choice in the marketplace if states chose, as California did, to follow Europe's mistake. The FTC should work to prevent such results from occurring. The FTC's examination of the current framework, working with IAB, our members, the broader industry, and other stakeholders, to encourage creation of the next-generation of innovation and empower consumers. An approach that takes sensitivity of the data in question into account and is based in reasonableness, with finely-calibrated limits to control for risks, is the appropriate approach.

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The IAB and its member companies are committed to meaningful privacy protections and competition in the digital marketplace. To that end, the IAB appreciates the opportunity to provide these comments to the FTC, and looks forward to continued engagement on these important topics. Please contact me at (202) 380-4700 with any questions.

Sincerely,

David Grimaldi  
EVP, Public Policy  
Interactive Advertising Bureau  
888 17<sup>th</sup> Street NW  
Suite 312  
Washington, DC 20006

cc: Michael Signorelli, Venable LLP  
Rob Hartwell, Venable LLP

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<sup>13</sup> Ivana Kottasová, CNNBusiness, *These companies are getting killed by GDPR* (May 11, 2018) <https://money.cnn.com/2018/05/11/technology/gdpr-tech-companies-losers/index.html>; Mark Scott *et al.*, *Six months in, Europe's privacy revolution favors Google, Facebook* (Nov. 23, 2018) <https://www.politico.eu/article/gdpr-facebook-google-privacy-data-6-months-in-europes-privacy-revolution-favors-google-facebook/>.

<sup>14</sup> Hannah Kuchler, *Financial Times*, *US small businesses drop EU customers over new data rule* (May 24, 2018) <https://www.ft.com/content/3f079b6c-5ec8-11e8-9334-2218e7146b04>.

<sup>15</sup> Lucia Moses, *Digiday*, *The Washington Post puts a price on data privacy in its GDPR response — and tests requirements* (May 30, 2018) <https://digiday.com/media/washington-post-puts-price-data-privacy-gdpr-response-tests-requirements/>.